IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 22

PETER CHAUNT, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals
For the Ninth Circuit

BRIEF FOR PETITIONER

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OPINION BELOW

The opinion below (R. 91-98) is reported in 270 F. 2d 179.

JURISDICTION

The judgment below was entered on September 22, 1959 (R. 98). Petition for certiorari was filed on December 16, 1959, and was granted on February 29, 1960 (R. 99). The jurisdiction of the Court rests on 28 U. S. Code, sec. 1254(1).

STATUTE INVOLVED

Section 340(a) of the Immigration and Nationality Act, 66 Stat. 163, 260, as amended by an Act of September 3, 1954, 68 Stat. 1232, 8 U. S. C. 1451,[1] provides, in part, as follows:

> "It shall be the duty of the United States Attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title [sec. 1421 of 8 U.S.C.] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively . . . ."

QUESTIONS PRESENTED

1. Whether a denaturalization judgment may be based on a ground not alluded to in the affidavit of good cause, the filing of which is required by the denaturalization statute as a prerequisite to the filing and maintenance of the action.

2. Whether denaturalization may validly be predicated on concealment in the naturalization proceedings of an arrest record, even though (a) disclosure of the arrests would not have led to denial of naturalization,

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[1] The amendment substituted "'United States attorneys'" for "'United States district attorneys.'"

(b) the arrests occurred years before the statutory period of good-behavior for eligibility for citizenship, (c) the arrests did not result in convictions, (d) some of the arrests were under ordinances which violated the First Amendment.

STATEMENT OF THE CASE

Petitioner, a native of Hungary, entered the United States in 1921 at the age of 22 (R. 91, 75, 77). In November 1939, he filed with the Immigration and Naturalization Service an "Application for a certificate of arrival and preliminary form for petition for naturalization" (R. 71, 92). On June 27, 1940, he filed a formal petition for naturalization in the United States District Court for the Eastern District of New York. On that same day he was orally examined by examiners of the Service. On November 28, 1940, the District Court admitted him to citizenship. (R. 73-79, 81, 92.)

On October 1, 1953, the government instituted suit to revoke petitioner's citizenship under Section 340(a) of the Immigration and Nationality Act (*supra,* p.2), on the statutory grounds that he had procured naturalization by concealment and misrepresentation (R. 1). The case was eventually tried on a second amended complaint (R. 15, 88).

A copy of the affidavit of good cause, required by the statute, was attached to both the original and amended complaints (R. 6-10, 23-26). The affidavit recited, in substance, that in the naturalization proceedings the petitioner had falsely denied membership in the Communist Party and that, by virtue of this membership, his representations of attachment to the Constitution,

disposition to the good order of the United States, and intent to renounce foreign allegiance, were false (ibid.).

The original and amended compliants made similar allegations (R. 1-4, 15-22). In addition, they alleged that petitioner had procured naturalization by concealing and misrepresenting a record of arrests (R. 4-5, 16-17, 20-21). The affidavit of good cause contained no reference to arrests or to concealment or misrepresentation of arrests.

After trial, the District Court entered judgment canceling petitioner's naturalization (R. 90), on findings that he had procured naturalization by concealments and misrepresentations regarding all three of the matters alleged in the complaint—i.e., arrests, Communist Party membership, and allegiance (R. 80-89).

The Court of Appeals affirmed solely on the ground that denaturalization was justified by the concealment and misrepresentation of arrests (R. 91-98). The court did not reach the other grounds of the trial court's action, stating (R. 97):

> "Since these findings [regarding the arrests] furnish ample support for the judgment revoking the defendant's naturalization, it is unnecessary for us to consider whether, as the defendant urges, the findings of the district court as to his concealment of his membership in the Communist Party and as to his lack of attachment to the principles of the Constitution and his disposition toward the good order of the United States can stand in the light of the decisions of the Supreme Court in Nowak v. United States, 1958, 356 U.S. 660, and Maisenberg v. United States, 1958, 356 U.S. 670, which were handed down after the district court entered its judgment in this case."

As a result, petitioner's denaturalization was sustained on appeal solely on a ground—concealment and misrepresentation of an arrest record—which was not alluded to in the affidavit of good cause.[2]

The trial court and the Court of Appeals found that in the naturalization proceedings petitioner had denied that he had ever been arrested (R. 85, 93-94).[3] As both courts found (R. 85-86, 94), petitioner had the following record of arrests and dispositions prior to his naturalization:

(1) On July 30, 1929, he was arrested on a charge that he had violated a New Haven ordinance by distributing handbills in a public street. He pleaded not guilty and was discharged. (R. 53-57.) (For text of the ordinance, see R. 69-70.)

(2) On December 21, 1929, he was arrested on a charge that he had violated New Haven park regulations by making "an oration, harangue, or other public demonstration in New Haven Green outside the churches." Petitioner pleaded not guilty. Disposition of the charge is unclear, the record showing merely the unexplained notation, "Found J. S." (R. 58-64.) (For text of the regulations, see R. 70 (par. 4).)

(3) On March 11, 1930, he was arrested on an information charging "general breach of the

[2] We do not brief the grounds for denaturalization which were not considered by the Court of Appeals, on the assumption that if we prevail here the Court will remand the case to the court below for disposition of the remaining grounds. *Barr* v. *Matteo*, 355 U.S. 171 (1957); *Alaska* v. *American Can Co.*, 358 U.S. 224, 227 (1959); *Palmar Steamship Corp.* v. *Scott*, 345 U.S. 427, 444 (1953); *F. C. C.* v. *WJR*, 337 U.S. 263, 285 (1949).

[3] For the evidence supporting this finding, see R. 71 (question 20), 29, 31-32, 73.

peace." He was found guilty and fined $25.00 by the City Court. On appeal to the Court of Common Pleas, the case was "nolled." (R. 65-68.)

The naturalization examiner testified that if an applicant for naturalization admitted that he had been arrested, it was customary for the Service's investigative unit to check with "the authorities" to ascertain whether the full facts were stated (R. 32-33). He also testified that if an arrest record were shown, "the Designated Examiner would make his recommendation on the basis of what the record showed, and the court, of course, would do the same on that" (R. 32).

SUMMARY OF ARGUMENT

I.

Under the statute, the filing of an affidavit of good cause is a prerequisite to the initiation and maintenance of a naturalization suit, and thus to a valid naturalization judgment. The affidavit of good cause contained no reference to arrests or the concealment of arrests. The denaturalization judgment was affirmed below exclusively on the arrest ground. Hence the judgment rests on a ground for which good cause was not shown by affidavit. The judgment is therefore erroneous.

Unless denaturalization litigation is confined to the subjects alleged in the affidavit of good cause, the defendant does not have the safeguard erected by the statute against the bringing of unsupported but highly damaging accusations.

II.

A. The statute authorizes denaturalization only for concealments or misrepresentations which actually

procured naturalization. The concealment or misrepresentation must have made the difference between obtaining and not obtaining naturalization. The government must therefore prove either that the suppressed facts, if known, would in themselves have justified denial of citizenship or that their disclosure would have led to the discovery of other facts which would have justified denial of citizenship.

This principle is supported by authority. It is a short step beyond the materiality requirement in perjury prosecutions, but corresponds to the rules governing relief from other civil judgments.

The court below applied an erroneous standard. It did not find that the arrests, if disclosed, would have justified denial of naturalization. It sustained the denaturalization solely on the ground that non-disclosure of the arrests frustrated further investigation into petitioner's qualifications for citizenship. And it held that it was immaterial whether the further investigation would have discovered facts disqualifying petitioner for naturalization. Thus the court's holding did not even satisfy the materiality requirement for perjury cases, much less the denaturalization requirement that the concealment or representation must have actually procured naturalization.

B. The denaturalization judgment cannot stand under the correct standards of materiality.

1. The only possible relevancy of arrests to the naturalization application arose from the statutory requirement limiting naturalization to those who had behaved as persons of good moral character in the period beginning five years before the application for citizenship. The arrests here occurred more than ten years

before the application; they did not result in convictions; they did not involve accusations of moral turpitude; two of them were under unconstitutional ordinances. The arrests, therefore, were trivial, remote, and irrelevant to good character. Hence they could not in themselves have justified denial of naturalization.

2. Nor is there any evidence that if the arrests had been disclosed, an ensuing investigation would have discovered other facts disqualifying petitioner for citizenship. On the contrary, the government's own testimony indicates that the most such an investigation would have discovered were the immaterial facts in the present record concerning the arrests.

ARGUMENT

I. THE JUDGMENT BELOW IS ERRONEOUS BECAUSE IT AFFIRMED PETITIONER'S DENATURALIZATION ON A GROUND NOT ALLUDED TO IN THE AFFIDAVIT OF GOOD CAUSE.

The court below sustained the cancellation of petitioner's citizenship solely on the ground that petitioner had concealed and misrepresented his arrest record. Yet the affidavit of good cause, required by the statute, contains not a word or intimation regarding arrests or concealment or misrepresentation of arrests; it deals exclusively with other claimed grounds for revocation.

United States v. *Zucca*, 351 U.S. 91 (1956), held that the filing of the good cause affidavit is a prerequisite to the initiation and maintenance of a naturalization suit. The filing is, indeed, a jurisdictional or quasi-jurisdictional requirement. This appears from the Court's holdings that a failure to file the affidavit with the complaint cannot be cured by a later filing, and also

renders the proceeding so nugatory that the trial court cannot coerce testimony by deposition.—*Mathes* v. *United States* and companion cases, 356 U.S. 256 (1958).

A showing of good cause by affidavit is, therefore, essential to a valid denaturalization judgment. So far as the judgment here rests upon concealment and misrepresentation of arrests—and, for present purposes, that is all it does rest on—no such showing was made. Hence the judgment is erroneous.

This analysis is borne out by *Nowak* v. *United States*, 356 U.S. 660 (1958), which held that a particular affidavit "satisfied the purpose of § 338(a) to protect those proceeded against from ill-considered action," because, "In substance the affidavit set forth the same matters upon which the District Court's later decree of denaturalization was based, and showed with adequate particularity the grounds on which the Government's suit rested" (at 662).

As *Nowak* demonstrates, the good cause requirement is violated if denaturalization is decreed on a subject not covered by the affidavit. The affidavit requirement is designed to protect naturalized citizens against unwarranted aspersions of reputation and unnecessary, but harassing, defense of their citizenship. As this Court stated in *United States* v. *Zucca*, *supra*, at 99-100:

> "The mere filing of a proceeding for denaturalization results in serious consequences to defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person once admitted to American citizenship, should not be subject to legal

> proceedings to defend his citizenship without a preliminary showing of good cause. Such a safeguard must not be lightly regarded."

Obviously, the purpose of the affidavit requirement is largely frustrated if the government may allege, litigate, and prevail as to matters not referred to in the affidavit. As to those matters, the citizen's "reputation is tarnished and his standing in the community damaged," and he must "defend his citizenship," all "without a preliminary showing of good cause."

If the government can complain of concealment of arrests on an affidavit alleging only concealment of Communist connections, then it can complain of concealment of Communist connections on an affidavit alleging only concealment of arrests. Which of the two charges causes the greater injury to the defendant will depend on his particular circumstances and on whether the public is, at the time, more aroused against criminals or Communists. The point is, however, that unless the litigation is confined to the subject-matter of the affidavit, the defendant does not have the affidavit protection against the government's making of unsupported but highly damaging accusations. And this would be contrary to the admonition in *Zucca* (at 100) that "such a safeguard must not be lightly regarded."

II. THE MISREPRESENTATION OF THE ARREST RECORD DOES NOT SUPPORT DENATURALIZATION BECAUSE IT DID NOT PROCURE NATURALIZATION.

A. In a Denaturalization Case the Government Must Prove that the Suppressed Facts Would Have Justified Denial of Citizenship or Would Have Led to the Discovery of Other Facts Which Would Have Justified Such a Denial

The statute by its text authorizes denaturalization not for any concealment or wilful representation made in the naturalization proceedings, but only for one which actually *procured* naturalization. The concealment or misrepresentation, therefore, must have made the difference between obtaining naturalization and not obtaining it. If disclosure of the true facts would not have made any difference in the result, obviously the concealment or misrepresentation did not procure naturalization and cannot justify denaturalization.

There are only two situations in which a concealment or misrepresentation can have made the difference in the result and hence be cause for denaturalization:

(1) The suppressed facts, if known, would in themselves have justified denial of citizenship; or

(2) Disclosure of the true facts would have led to discovery of other facts which would have justified denial of citizenship.

It follows that the government must prove one or the other of these alternatives. And it must do so "by clear, unequivocal and convincing evidence which does not leave the issue in doubt." *Klapprott* v. *United States*, 335 U.S. 601, 612 (1949); *Schneiderman* v. *United States*, 320 U.S. 118, 135 (1943); *Baumgartner* v. *United States*, 322 U.S. 665, 670 (1944). Cf. *Perez*

v. *Brownell*, 356 U.S. 44, 47 ftn. 2 (same rule for expatriation cases).

United States v. *Anastasio*, 226 F. 2d 912 (3rd Cir. 1953), cert. den. 351 U.S. 931, illustrates the principle that denaturalization can be based only on suppressions which actually affected the result of the naturalization proceeding. It held that concealment of an arrest record and an illegal entry did not support denaturalization where the true facts were known to the government at the time of naturalization. Similarly, *United States* v. *Kessler*, 213 F. 2d 53, 58 n. 9 (3rd Cir. 1953) stated: "We have found no decision and none has been cited to us where citizenship has been revoked for failure to disclose facts the revelation of which could not have justified refusal of citizenship in the first place."

A like construction has been placed on the analogous statute providing for the deportation of aliens who procure visas by wilful misrepresentations of material facts. Under that statute it must be shown that the alien would have been denied a visa if he had disclosed the true facts; the mere fact that the misrepresentation impeded investigation is not sufficient cause for deportation. *Calvillo* v. *Robinson*, 271 F. 2d 249 (7th Cir. 1959).

Our analysis is also in accord with the tenet that in an action instituted "for the purpose of depriving one of the precious right of citizenship previously conferred we believe the facts and the law should be construed as far as is reasonably possible in favor of the citizen." *Schneiderman* v. *United States*, *supra*, at 122.

The denaturalization requirement that the government must prove that the falsification affected the result is a short step beyond the materiality requirement in prosecutions for perjury or false statements. In those cases the falsehood must be one which was reasonably likely to affect the result. *Weinstock* v. *United States*, 231 F. 2d 699, 701-702 (App. D.C. 1956); *Freidus* v. *United States*, 223 F. 2d 598, 601 (App. D.C. 1955); *United States* v. *Hendrickson*, 200 F. 2d 137, 139 (7th Cir. 1952), cert. den. 345 U.S. 926; *United States* v. *Moran*, 194 F. 2d 623 (2d Cir. 1952), cert. den. 343 U.S. 965.

The denaturalization test thus corresponds to the rule that relief from a final judgment is not available on grounds of fraud unless the fraud had foreclosed a meritorious claim or defense. *White* v. *Crow*, 110 U.S. 183 (1884); *Knox County* v. *Harshman*, 133 U.S. 152, 154 (1890); *United States* v. *Beebe*, 180 U.S. 343, 348 (1901); *Continental National Bank* v. *Holland Banking Co.*, 66 F. 2d 823, 829 (8th Cir. 1933); *Miller Rubber Co.* v. *Massey*, 36 F. 2d 466, 467 (7th Cir. 1930); *Simonds* v. *Norwich Union Indemnity Co.*, 73 F. 2d 412, 415 (8th Cir. 1934), cert. den. 294 U.S. 711; *Restatement, Judgments* (1942) secs. 118, 121, 126. Naturaliztaion is accomplished by a formal judgment entered in a proceeding in which the government is a party and has a right of appeal. Considering the vital interest involved in American citizenship (*Knauer* v. *United States*, 328 U.S. 654, 658-659 (1946)), naturalization judgments should not be more vulnerable than other civil judgments.

The need to restrict the grounds for denaturalization is increased by the fact that denaturalization proceed-

ings are not governed by any statute of limitations or, apparently, any rule of laches. So here petitioner was denaturalized in an action commenced thirteen years after his naturalization on account of concealment of three thoroughly inconsequential arrests.[4] Extension of the grounds for denaturalization automatically expands the utilization of stale evidence and the possibility that relevant defense evidence has disappeared. Thus the stability of naturalized citizenship is doubly undermined.

For all these reasons, it is clear that the Court of Appeals applied an erroneous standard. The court did not hold that petitioner's arrest record, if disclosed, would in itself have justified denial of naturalization. Neither did it find that disclosure of the arrests would have led to the discovery of other facts which would have justified such a denial. It sustained the denaturalization judgment solely on the ground that suppression of the arrest record "foreclosed the Immigration and Naturalization Service and the [naturalizing] district court from making a further investigation as to whether [petitioner] had all the qualifications for citizenship required by the Act of 1906, as a result of which the Service recommended and the district court granted his petition for naturalization" (R. 94-95). But it did not find that the further investigation, if made, would have disclosed disqualifying facts. On the contrary it erroneously stated (R. 94-95):

> "It was not necessary for the district court to determine whether, upon further inquiry prompted by knowledge of the defendant's arrests, he would

[4] In *United States* v. *Costello*, 275 F. 2d 355 (2d Cir. 1960), cert. granted, 362 U.S. 973, denaturalization was decreed in an action instituted 33 years after naturalization.

> have been found ineligible for citizenship. For the test of the materiality of such a concealment and misrepresentation of facts 'is not whether naturalization would have been refused if defendant had revealed the truth, but whether, by his false answers, the government was denied the opportunity of investigating the facts relating to his eligibility.' "

The court's holding that a foreclosure of further investigation is per se sufficient does not even satisfy the materiality requirement for perjury and false statement cases. The court laid down an untenable rule of law that denaturalization is justified for the concealment of any arrests, no matter how remote, for whatever trivial offense, whether under an unconstitutional ordinance, regardless of the disposition of the charge, and though disclosure of the arrests would not have resulted, directly or indirectly, in denial of naturalization.

B. The Government Did Not Prove Either of the Alternatives Necessary to Show that the Misrepresentation Procured Naturalization

Once the correct test, described in the preceding section, is applied, it is clear that the evidence fails to establish that the suppression of the arrest record procured naturalization. In fact the record shows that the arrests were immaterial even under the standards applicable in perjury and false statements prosecutions. Hence the denaturalization judgment can not be supported.

1. The first alternative of the correct test is not met because petitioner's arrests, if they had been disclosed, would not have justified denial of citizenship by the naturalizing court. At the time petitioner was natural-

ized (November 28, 1940), the naturalization statute said nothing about arrests or convictions. The only possible relevancy of the subject to naturalization arose out of the statute's provision that no alien should be admitted to citizenship unless "he has behaved as a person of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States" during the period beginning five years before the petition for naturalization and ending with the naturalization.[5]

The arrests preceded the petition for naturalization, filed June 27, 1940 (R. 81, 92), by more than ten years. The statute, as we have seen, required good character only for the period beginning five years before the petition.

"The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct." *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 241 (1957). In the case of one of the arrests, petitioner was discharged. In another, the charge was "nolled" on appeal from a $25.00 fine. The disposition of the third arrest is unclear.

Obviously none of the arrests involved accusations of moral turpitude. Two of the arrests, including the one of unknown disposition, were for violations of city ordinances or regulations which clearly were uncon-

[5] Sec. 4, subd. Fourth, of the Naturalization Act of June 29, 1906, as amended by Act of March 2, 1929 (34 Stat. 598, as amended by 45 Stat. 1513). The superseding Nationality Act of 1940 did not become effective until January 13, 1941. 54 Stat. 1154.

stitutional on their face.[6] The third arrest, for "general breach of peace," was the one in which the $25.00 fine was nullified when the case was "nolled" on appeal (R. 65-68).

In short, the arrests were remote trivialities, which were irrelevant to the statutory requirement that an applicant for naturalization must have behaved as a person of good moral character during the period beginning five years before the petition for naturalization.

2. The second alternative of the correct test is not met because there is not an iota of evidence that if petitioner had disclosed the arrests this would have resulted in an investigation which would have discovered facts making him ineligible for naturalization. The only evidence as to what might have happened if the arrests has been disclosed is the following bit of testimony of the naturalization examiner, who testified as a government witness (R. 32-33):

> "Q. Now, if at the time you made your preliminary examination of this petitioner—what was the custom and practice if the petitioner answered yes with regard to the question, 'Have you ever been arrested'?

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[6] The Court of Appeals was mistaken in its observation (R. 96) that the texts of the ordinances were not before the District Court. The ordinances were received at the trial as Government Exhibit 5 (R. 68-70). As to the invalidity of the ordinance prohibiting distribution of handbills in a public street, see *Jamison* v. *Texas*, 318 U.S. 413 (1943) and *Talley* v. *California*, 362 U.S. 60 (1960). As to the invalidity of the other ordinance, prohibiting making a speech "in New Haven Green" without "special authority," and providing no standards for dispensing such authority, see *Kunz* v. *New York*, 340 U.S. 290 (1951).

"A. Well, I would note whatever record he might furnish me, and the petitioner would then go ahead with the filing of his petition with that record there. It would later be verified and checked, and the Designated Examiner would make his recommendation on the basis of what the record showed, and the court, of course, would do the same on that. But the facts would be known to both the Designated Examiner and the court.

"Q. Now, you say that if any arrests were disclosed that it was the custom and practice at that time to verify them. Will you tell us what the procedure was?

"A. Well, the office procedure, when the petition had been filed they would, if there were any items that required further investigation, it would go to the investigative unit and they would take it up from there.

"Q. Well, now, if the—

"The Court: Wait a minute. 'Take it up from there'?

"The Witness: They would make such investigation—that is, if the petitioner said he arrested (*sic*) at a certain time and place, they would check with the authorities there to ascertain what the results of that—whether the full facts were stated."

According to this testimony, the most a further investigation would have disclosed were the facts in the present record concerning the arrests. These, as we have seen, would not have justified a refusal to naturalize petitioner. There is no evidence that any additional facts would have been discovered, much less additional facts which would have shown that petitioner was ineligible for citizenship.

Accordingly, there is no basis for concluding that the suppression of petitioner's arrest record procured or was material to naturalization. Hence the statutory re-

quirement for denaturalization on account of concealment or misrepresentation of the arrests does not exist.

CONCLUSION

The judgment below should be reversed and the case remanded to the Court of Appeals.

Respectfully submitted,

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